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Message Text

SECRET

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11
ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 CCO-00 /026 W
---------- 065867
Z 010936Z SEP 76
FM AMEMBASSY SEOUL
TO SECSTATE WASHDC FLASH 9193

S E C R E T SEOUL 6914

EXDIS

PASS TO SECDEF WASHDC AND JCS WASHDC

JOINT EMBASSY/CINCUNC MESSAGE

EO 11652: GDS
TAGS: KS, PFOR
SUBJECT: PANMUNJOM NEGOTIATIONS

REF: (A) STATE 216547, (B) CINCUNC 311549Z AUG 76

1. WE HAVE RAISED THE QUESTION OF MAC ACCESS AS INSTRUCTED BY REF A BUT TAKE THIS OPPORTUNITY TO NOTE ALTERNATIVE APPROACH TO LEGAL ASPECT OF ISSUE AND TO EXPRESS OUR DOUBTS ABOUT THE FEASIBILITY OF PURSUING THIS ISSUE FURTHER IN PRESENT CIRCUMSTANCES.

2. AS REGARDS LEGAL ISSUES, THE AGREEMENT WE NOW ARE NEGOTIATING IS A MODIFICATION OF THE "AGREEMENT ON THE MILITARY ARMISTICE COMMISSION HQ AREA, ITS SECURITY AND ITS CONSTRUCTION" DATED 19 OCTOBER 1953, NOT OF THE MILITARY ARMISTICE AGREEMENT (MAA). THERE ARE MANY ACTIVITIES PERMITTED BY THE MAA, E.G., FARMING, CIVIL POLICE, ENTRY INTO THE DMZ AUTHORIZED UNILATERALLY BY THE CDR, WHICH ARE PROHIBITED BY THE HQ AGREEMENT. CONVERSELY SOME ACTIVITIES PROHIBITED BY THE MAA ARE PERMITTED BY THE HQ AGREEMENT, E.G., CROSSING THE MDL WITHOUT CONSENT, ARMED MILITARY FORCES WITHIN THE DMZ, CONSTRUCTION OF GUARD POSTS. IT THEREFORE FOLLOWS THAT WHATEVER THE MAC
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AGREES TO WITH REGARD TO THE HQ AREA IN GENERAL AND THE

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JSA IN PARTICULAR IS WITHOUT PREJUDICE TO
THEIR RIGHTS UNDER ART 11, MAA. GENERALIA SPECIALIBUS NON
DEROGANT. MOREOVER, THE MA AGREEMENT ITSELF INSURES THAT
THE MAC CANNOT MAKE AMENDMENTS OR MODIFICATIONS TO THE
BASIC UNDERTAKING (SEE ART 35).

3. AS REGARDS CURRENT PRACTICE AND PRECEDENT, FOLLOWING
SHOULD BE NOTED. UNC MAC MEMBERS HAVE NOT IN PAST CROSSED
THE MDL IN THE JSA. ON OTHER HAND, KPA/CPV MEMBERS
CURRENTLY ENTER THE JSA THROUGH THE BRIDGE OF NO RETURN,
TRANSITING UNC SIDE OF JSA. THIS ROUTE WOULD BE DENIED
THEM BY THE CURRENT NORTH KOREAN FORMULATION. THE ROK
MILITARY IS PARTICULARLY DESIROUS, AT LEASE, TO SEVERELY
LIMIT PKA TRAFFIC ON THE BRIDGE OF NO RETURN, A VIEW WE
FULLY SHARE. RETAINING FREEDOM OF MOVEMENT FOR
MAC WOULD, THEREFORE, PROVIDE THE OTHER SIDE WITH AN OPPORTUNITY
FOR WHICH WE WOULD RECEIVE NO COMPARABLE BENEFIT IN RETURN.

SEEKING EXCEPTION FOR MAC PERSONNEL WOULD, MOREOVER, RUN
CONTRARY TO SPECIFIC LANGUAGE PROVIDED BY KPA SECRETARY
AUGUST 31, WHICH READ, "EXCLUDING MAC PERSONNEL OF ALL
LEVELS, SECURITY GUARDS, AND ALL MILITARY PERSONNEL..."
PRESSING THIS ISSUE WOULD, WE BELIEVE, DELAY NEGOTIATIONS
FOR PROVISION WHICH WE BELIEVE IS NOT OF GREAT BENEFIT
TO US AND IS SOME RESPECTS CONTRARY TO OUR INTERESTS.

5. WE, THEREFORE, PROPOSE TO SOLVE THE FREEDOM OF
MOVEMENT ISSUE, INCLUDING THE CORPORATE MAC, BY COMMENTING
TO THE NORTH KOREANS AT AN APPROPRIATE TIME "I WISH TO
FURTHER NOTE THAT YOUR SIDE'S PROPOSAL WOULD LIMIT THE
PRIOR ARRANGED MOVEMENT INTO THE OTHER SIDE'S AREA
TO MAINTENANCE BY MILITARY COMMUNICATIONS MAINTENANCE
PERSONNEL. I SUGGEST THAT THIS EXCEPTION, WHICH
DEPENDS UPON THE PRIOR CONSENT OF BOTH SIDES, BE EXTENDED
TO ANY MUTUALLY AGREED AUTHORIZED ACTIVITY BY UNARMED
MILITARY PERSONNEL AS THE MAC SHOULD CHOOSE TO PERMIT
TO INCLUDE THE MOVEMENT OF THE MAC ITSELF."

6. URGENTLY REQUEST CONCURRENCE.
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NOTE BY OC/T: NOT PASSED SECDEF, JCS.

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NNN

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